IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO. 1723 OF 2004

Mr. M.B. Gupta ... Petitioner

Vs.

Lovelita Co-op. Hsg. Soc. Ltd. and Ors. ... Respondents

Mr. D.A. Athavale for Petitioner.

Mr. D.L. Khanchandani for Respondnet No. 1.

Mr. R.M. Sawant, Government Pleader for Respondnet No. 2.

CORAM : F.I. REBELLO,J.
DATED : SEPTEMBER 13, 2004

P.C. :

1. Rule. Heard forthwith.

2. The Petitioner by the present petition, challenges the order dated 7.10.2003 passed by the Secretary, Cooperation, Government of Maharashtra whereby; revision preferred by Respondent No. 1 has been allowed and the order passed by the first Revisional Authority has been set aside. A few facts may be set out :

. That the Petitioner herein aggrieved by the certificate of recovery dated 24.5.2002 issued by the Deputy Registrar, Cooperative Societies, Bandra had challenged the same by Revision Application No.

29 of 2001. The contentions raised on behalf of the petitioner herein that the Respondent society had arbitrarily and illegally increased the outgoings found favour with the Revisional Authority. The Revisional Authority further found that charging of compound interest at the rate of 2% is illegal and is in clear violation of the byelaws and consequently set aside the recovery certificate. This order was challenged by the respondent society before the Secretary;, Cooperation in Revision Application. The learned Revisional Authority found favour with the contention of the Respondents and noted that the Registrar before issuing recovery certificate had dealt with factual position and in these circumstances, the revisional authority ought not to have cancelled certificate by ignoring the defence of the society and accordingly allowed revision Application. It is this order which is subject matter of the present petition.

3. At the hearing, various contentions have been raised. However, it will not be possible to interfere with the findings of fact and on issues which have been answered. The Petition is limited to the contention as to the rate of interest and at

which rate interest can be charged. From the record the contention of the Respondent society in their claim field before the Deputy Registrar as on the date of filing of the application i.e. 10.3.1999 was that maintenance charges amounted to Rs.30,237.97 and interest on defaulted amounts amounted to Rs.20,736.02. It is the case of the Petitioner that it is not disputed that a sum of Rs.25,000/- has been deposited with the society and a further sum of Rs.30,000/- has been deposited in this court pursuant to interim order made by this court.

. On behalf of the society, their learned counsel has produced a copy of the reply filed by the society. The main reply is not found in the records. With the reply is annexed a resolution passed by the General Body on 11.1.1987 and which reads as under :

> "It is unanimously decided that the penalty for defaulters whose dues increases above the amount equal to six months installment will be charged defaulting charges @ 2% per month for full outstanding dues. This will be

applicable from January, 1987."

4. On behalf of the petitioner, their learned counsel draws my attention to the byelaws of the society and more specifically byelaws Nos. 72, 73 and 74 which are reproduced herebelow :

"72. The Secretary of the Society, shall prepare demand notice in respect of the charges of the society payable by members on the basis of the bye-law No. 71(a) and issue the same to all the members on or before the date fixed by the Committee in that behalf. Every member of the Society shall pay the amount mentioned in the demand notice in full within such period as may be fixed by the Committee.

73. A member shall be deemed to have committed default in payment of the charges of the Society, if the payment mentioned in the demand notice is not made within the period fixed by the Committee under the bye-law No. 72. The Secretary of the Society shall bring the cases of defaults in payment of the

Society's charges to the notice of the Committee for taking further necessary action.

74. A defaulter member shall be required to pay simple interest at such rate as is fixed by the general body of the Society at its meeting, subject to the maximum of 21 per cent per annum, on the charges of the Society, defaulted by a member, from the date the amount was defaulted till its payment."

. From the perusal of the said byelaws what emerges is as under :

. That the Secretary has to prepare demand notice in respect of the charges of the society payable by the members and issue the same to all the members on or before the date fixed by the committee in this behalf. The member shall pay the amount mentioned in the demand notice in full within the said period as may be fixed by the committee.

. A member shall be deemed to have committed default in payment of the charges of the society,

if the payment mentioned in the demand notice is not made within the period fixed by the Committee under the bye-law No. 72. A defaulter member shall be required to pay simple interest at such rate as is fixed by the general body of the Society at its meeting, subject to the maximum of 21 per cent per annum.

. Nothing has been shown on record by Respondent No.l society that members at the annual general meeting had agreed that the procedure under byelaw No. 72 is deemed to have been complied with, if the notice regarding dues of each outstanding member is put up on the notice board. The mere practice pleaded by the Society itself cannot substitute bye law 72. It could have been understood if the general body had passed such resolution in which case it would have been possible to read such procedure and practice into byelaw No.72. That has not been done. Once that be the case, there can only be default, if there is any failure in terms of byelaws No. 73. Otherwise, there cannot be default.

. Apart from that, the resolution to charge interest at the rate of 2% is clearly contrary to

the byelaw No. 74 as the maximum interest which is payable is 21 per cent per annum simple interest.

. It may be mentioned that my attention was invited to the subsequent resolution of 26.7.1997 wherein the society has amended its earlier resolution and reduced the charges being claimed from the defaulter members at the rate of 2% per month to 21% per annum but with effect from 1st April, 1997. In other words, it is only after 1.4.1997 that the interest is reduced from 24% to 21% p.a. That again will be inconsistent as on 31.3.1997 in terms of bye law No. 74 of the Society.

5. In the light of that, it will not be possible to support the interest charged by the society. However, as the petitioner has not paid the amount, equity would require that he should re-compensate the society at least by way of some interest and on these facts and circumstances, the petitioner is required to pay interest calculated at the rate of 6% p.a. for the amount deeemd to be in default from time to time.

6. Considering the above, the following order :

. The amount deposited before this court to be paid in the hands of Respondent No. 1 society without any security. This amount along with the sum of Rs.25,000/- already with the society to be adjusted in the following manner : (1) towards the principal dues which are due and payable; (2) Interest on defaulted amounts calculated at the rate of 6% p.a. The same should be worked out between Petitioner and Respondent No. 1 society. If that is not done, the Recovery Officer, i.e. Deputy Registrar, Cooperative Societies, K-West, Mumbai to accordingly work out the dues and direct payment by the petitioner to society. That amount to be adjusted from the amounts in the hands of the society. If there be any balance amount, that will be adjusted against the future dues by the Petitioner to the society. If the Petitioner has to pay any further dues that will be paid by him within twelve weeks after the calculations being completed.

. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO,J.)